

costs ordinarily borne by the non-Federal party or to compensate the non-Federal party for assuming Federal costs only on an exceptional basis when it is clearly in the public interest and when the authorized officer determines and documents that each of the following circumstances exist:

(1) The amount of such cost assumed or compensation is reasonable and accurately reflects the value of the cost or service provided, or any responsibility and requirement assumed;

(2) The proposed exchange is a high priority of the agency;

(3) The land exchange must be expedited to protect important Federal resource values, such as congressionally designated areas or endangered species habitat;

(4) Cash equalization funds are available for compensation of the non-Federal party; and

(5) There are no other practicable means available to the authorized officer for meeting Federal exchange processing costs, responsibilities, or requirements.

(c) The total amount of an adjustment agreed to as compensation for costs pursuant to this section shall not exceed the limitations set forth in § 254.12(b) of this subpart.

[59 FR 10867, Mar. 8, 1994; 59 FR 15501, Apr. 1, 1994]

§ 254.8 Notice of exchange proposal.

(a) Upon entering into an agreement to initiate an exchange, the authorized officer shall publish a notice once a week for four consecutive weeks in newspapers of general circulation in the counties in which the Federal and non-Federal lands or interests proposed for exchange are located. The authorized officer shall notify authorized users, the jurisdictional State and local governments, and the congressional delegation and shall make other distribution of the notice as appropriate. At a minimum, the notice shall include:

(1) The identity of the parties involved in the proposed exchange;

(2) A description of the Federal and non-Federal lands being considered for exchange;

(3) A statement as to the effect of segregation from appropriation under

the public land laws and mineral laws, if applicable;

(4) An invitation to the public to submit in writing any comments on or concerns about the exchange proposal, including advising the agency as to any liens, encumbrances, or other claims relating to the lands being considered for exchange; and

(5) The deadline by which comments must be received, and the name, title, and address of the official to whom comments must be sent and from whom additional information may be obtained.

(b) To be assured of consideration in the environmental analysis of the proposed exchange, all comments must be made in writing to the authorized officer and postmarked or delivered within 45 days after the initial date of publication.

(c) The authorized officer is not required to republish legal descriptions of any lands that may be excluded from the final exchange transaction, provided such lands were identified in the notice of exchange proposal. In addition, minor corrections of land descriptions and other insignificant changes do not require republication.

§ 254.9 Appraisals.

The Federal and non-Federal parties to an exchange shall comply with the appraisal standards as set forth in paragraphs (a) through (d) of this section, and, to the extent appropriate, with the Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference 1992 (Washington, DC, 1992), ISBN 0-16-038050-2 when appraising the values of the Federal and non-Federal lands involved in an exchange.

(a) Appraiser qualifications.

(1) A qualified appraiser(s) shall provide to the authorized officer appraisals estimating the market value of Federal and non-Federal properties involved in an exchange. A qualified appraiser may be an employee or a contractor to the Federal or non-Federal exchange parties. At a minimum, a qualified appraiser shall be an individual agreeable to all parties and approved by the authorized officer, who is competent, reputable, impartial, and

has training and experience in appraising property similar to the property involved in the appraisal assignment.

(2) Qualified appraisers shall possess qualifications consistent with State regulatory requirements that meet the intent of Title XI, Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331). In the event a State or Territory does not have approved policies, practices, and procedures regulating the activities of appraisers, the Forest Service may establish appraiser qualification standards commensurate with those generally adopted by other States or Territories meeting the requirements of FIRREA.

(b) *Market value.*

(1) In estimating market value, the appraiser shall:

- (i) Determine the highest and best use of the property to be appraised;
- (ii) Estimate the value of the lands and interests as if in private ownership and available for sale in the open market;
- (iii) Include historic, wildlife, recreation, wilderness, scenic, cultural, or other resource values or amenities as reflected in prices paid for similar properties in the competitive market;
- (iv) Consider the contributory value of any interest in land such as water rights, minerals, or timber, to the extent they are consistent with the highest and best use of the property; and
- (v) If stipulated in the agreement to initiate in accordance with §254.4 of this subpart, estimate separately the value of each property optioned or acquired from multiple ownerships by the non-Federal party for purposes of exchange, pursuant to §254.5 of this subpart. In this case, the appraiser also must estimate the value of the Federal and non-Federal properties in a similar manner.

(2) In estimating market value, the appraiser may not independently add the separate values of the fractional interests to be conveyed, unless market evidence indicates the following:

- (i) The various interests contribute their full value (pro rata) to the value of the whole; and
- (ii) The valuation is compatible with the highest and best use of the property.

(3) In the absence of current market information reliably supporting value, the authorized officer may use other acceptable and commonly recognized methods to determine market value.

(c) *Appraisal report standards.* Appraisals prepared for exchange purposes must contain the following minimum information:

- (1) A summary of facts and conclusions;
- (2) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal assignment, if any;
- (3) An explanation of the extent of the appraiser's research and actions taken to collect and confirm information relied upon in estimating value;
- (4) An adequate description of the physical characteristics of the land being appraised; a statement of all encumbrances; title information; location, zoning, and present use; an analysis of highest and best use; and at least a 5-year sales history of the property;
- (5) A disclosure of any condition that is observed during the inspection of the property or becomes known to the appraiser through the normal research which would lead the appraiser to believe that hazardous substances may be present on the property being appraised;
- (6) A comparative market analysis and, if more than one method of valuation is used, an analysis and reconciliation of the methods used to support the appraiser's estimate of value;
- (7) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, effect of any favorable financing on sale price, and verification by a party involved in the transaction;
- (8) An estimate of market value;
- (9) The effective date of valuation, date of appraisal, signature, and certification of the appraiser;
- (10) A certification by the appraiser to the following:
 - (i) The appraiser has personally contacted the property owner or designated representative and offered the

owner an opportunity to be present during inspection of the property;

(ii) The appraiser has personally examined the subject property and all comparable sale properties relied upon in the report;

(iii) The appraiser has no present or prospective interest in the appraised property; and

(iv) The appraiser has not received compensation that was contingent on the analysis, opinions, or conclusions contained in the appraisal report; and

(1) Copies of relevant written reports, studies, or summary conclusions prepared by others in association with the appraisal assignment which were relied upon by the appraiser to estimate value, which may include, but is not limited to, current title reports, mineral reports, or timber cruises prepared by qualified specialists.

(d) *Appraisal review.*

(1) Appraisal reports shall be reviewed by a qualified review appraiser meeting the qualifications set forth in paragraph (a) of this section. Statements of value prepared by agency appraisers are not subject to this review.

(2) The review appraiser shall determine whether the appraisal report:

(i) Is complete, logical, consistent, and supported by market analysis;

(ii) Complies with the standards prescribed in paragraph (c) of this section; and

(iii) Reasonably estimates the probable market value of the lands appraised.

(3) The review appraiser shall prepare a written review report, containing at a minimum:

(i) A description of the review process used;

(ii) An explanation of the adequacy, relevance, and reasonableness of the data and methods used by the appraiser to estimate value;

(iii) The review appraiser's conclusions regarding the appraiser's estimate of market value; and

(iv) A certification by the review appraiser to the following:

(A) The review appraiser has no present or prospective interest in the property which is the subject of the review report; and

(B) The review appraiser has not received compensation that was contin-

gent upon approval of the appraisal report.

§254.10 Bargaining; arbitration.

(a) Unless the parties to an exchange agree in writing to suspend or modify the deadlines contained in paragraphs (a)(1) through (a)(4) of this section, the parties shall adhere to the following:

(1)(i) Within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange may agree on the appraised values or may initiate a process of bargaining or some other process to determine values. Bargaining or any other process must be based on an objective analysis of the valuation in the appraisal report(s) and is a means of reconciling differences in such report(s). Bargaining or another process to determine values may involve one or more of the following actions:

(A) Submission of the disputed appraisal(s) to another qualified appraiser for review;

(B) Request for additional appraisals;

(C) Involvement of an impartial third party to facilitate resolution of the value disputes, or

(D) Use of some other acceptable and commonly recognized practice for resolving value disputes.

(ii) Any agreement based upon bargaining must be in writing and made part of the administrative record of the exchange. Such agreement must contain a reference to all relevant appraisal information and state how the parties reconciled or compromised appraisal information to arrive at an agreement based on market value.

(2) If within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange cannot agree on values but wish to continue with the land exchange, the appraisal(s), at the initiative of either party, must be submitted to arbitration, unless, in lieu of arbitration, the parties have employed a process of bargaining or some other process to determine values. If arbitration occurs, it must be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association. The Secretary or an official